

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**KRS FORT WORTH, LLC AND WEST §
WHARTON HOSPITAL DISTRICT §**

V. §

CASE NO. 4:24-CV-00337-O

**UNITED STATES DEPARTMENT OF §
HEALTH & HUMAN SERVICES, §
CENTERS FOR MEDICARE & §
MEDICAID SERVICES, THROUGH §
ITS SECRETARY, XAVIER BECERRA §**

PROOF OF COMMUNICATIONS REGARDING NOTICE

TO THE HONORABLE COURT:

As requested by the Court, Plaintiffs, KRS Fort Worth, LLC (“KRS”) and West Wharton Hospital District (“WWHD”), file their Proof of Email Communications Regarding Notice. The communications addressed in this notice are communications by Plaintiffs’ counsel, Allison Spruill. Plaintiffs’ counsel, Jeff Carruth, will be filing separate notices of email communications and notices of filings made by his office regarding the Motion to Reconsider, as well as direct email service of partis to the bankruptcy case.

1. Before discussing the email communications, the first notice that Plaintiffs would seek injunctive relief and a TRO was made via a Teams call on Thursday, April 11, 2024. Plaintiffs’ counsel stated that they wanted to reach resolution without court intervention, and that they did not want to seek injunctive relief or a TRO, but that is what they believed to be their only alternative given the dire circumstances surrounding termination of the provider agreement. This call was a precursor to the email communications involving Whitney Tharpe, which were previously provided to the Court in Ex. 12-15 accompanying the Motion for Reconsideration.

2. On April 17, 2024, Gladys Hernandez, legal assistant for Best & Spruill, P.C. provided email copies of Plaintiffs' Complaint/Request for Injunctive Relief and TRO to Ms. Tharpe (Ex. A). Ms. Hernandez also sent Ms. Tharpe a copy of Plaintiffs' Request for an Emergency Hearing (Ex. A). Due to file size, all of these pleadings were provided via a Dropbox link included in an email (Ex. A).

3. When the Court denied Plaintiff's request for an emergency hearing on the evening of 4/17/24, Mr. Carruth drafted a motion for reconsideration, and sent Ms. Tharpe a copy. Mr. Carruth will be providing copies of documents related to notice of Ms. Tharpe on that filing.

4. Mr. Carruth's office also provided notice of the Motion for Reconsideration to parties in the bankruptcy proceedings. Mr. Carruth will be providing notice of those communications.

5. Out of an abundance of caution, since this Court was concerned regarding the notice issue, and due to the time element involved, Plaintiffs submitted their request for injunctive relief as an adversary proceeding under the bankruptcy case (TXEB Adv. No. 24-04021).

6. Today (4/19/24), in the adversary proceeding, Hon. Joshua Searcy (Eastern District Bankruptcy Judge filling in for Northern District Bankruptcy Judge, Brenda Rhoades, who is out of the state on vacation this week) held two status conferences via Teams to discuss the TRO (one at 10:15 a.m. and another at 1:30 p.m.).

7. Although Judge Searcy advised he could not issue any ruling in this case (since he represented the Unsecured Creditors Committee in a prior Remarkable bankruptcy proceeding before he took the Bench), the issues surrounding the current termination of Remarkable's provider agreement and the pending request for injunctive relief/TRO were discussed.

8. The status hearings with Judge Searcy were attended by representatives for Defendant in this case (Whitney Tharpe, Dan Wolfe, Ashley Fenton, Esther Cochran, and the 1:30 session was attended also by Tangla Fudge-Bernal – the same lawyers who were involved in the conference calls last week referenced in Plaintiffs’ pleadings).

9. The Texas Health & Human Services Commission representatives from the Texas Attorney General’s office (Chris Murphy and Layla Milligan) were also present. Notice to all of these parties was provided by Mr. Carruth.

10. Plaintiffs also advised Judge Searcy that there were separate pending requests for emergency relief before this Court, which had been denied due to concerns regarding notice. Plaintiffs present all of this evidence to the Court so that it can see Plaintiffs did attempt to notify the only lawyers with whom it has ever had any communication regarding the matters set forth in Plaintiffs’ Complaint – the same lawyers who attended the status conferences today before Judge Searcy.

Respectfully submitted,

BEST & SPRUILL, P.C.

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CERTIFICATE OF SERVICE

I certify that a true and correct courtesy copy of this pleading was served in accordance with the Federal Rules of Civil Procedure via electronic mail on this 19th day of April, 2024, as follows (even though Plaintiffs do not know whether counsel listed below will represent HHS/CMS in this proceeding):

Whitney Tharpe (U.S. Attorney's office)
Counsel for HHS/CMS

/s/ Allison L. Spruill
ALLISON L. SPRUILL